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MEMORANDUM FOR: Director of Central Intelligence
THROUGH : Deputy Director of Central Intelligence
FROM :
SA to the DCI for Compartmentation
SUBJECT : SSCI Questions on APEX

X Completed 12-7

1. This memorandum is for your review and presents two issues that must be decided before making a response to 17 questions from the SSCI on APEX. These questions were forwarded to the Agency over the joint signatures of Senators Bayh and Goldwater. Nine of the 17 refer to . The answers (Tab C) have been coordinated with RMS the Office of Security OLC and OGC but not with other agencies and departments. After you approve the package, the answers will be provided to other members of the APEX Steering Group as a part of the effort to keep in step Community communications to the Congress concerning APEX.

2. Two of the questions, No. 5 and No. 17, need your specific review. Questions No. 5 and 6 concern resources. The answer to No. 5 commits you to look again at the parts of APEX that are perceived as demanding additional resources for implementation and subsequent operations. The fourth sentence of the paragraph states, "Consequently, APEX principles and procedures, APEX implementation schedules, and the estimates are all undergoing reexamination." This sentence may carry more of a commitment than you wish to make but, as indicated in the papers concerning setting a new APEX start-up date, I believe implementation cannot begin without at least looking again at some of these problems.

3. A second issue is raised by the Committee's question about the extent of Committee access to information that has been designated as . Question 17 reads as follows:

Can procedures be used to keep information from the intelligence oversight committees of the House or Senate? What procedures will be instituted to ensure that these committees will know if any APEX documents are not made available to them? Will APEX document numbers be strictly sequential, or will non-sequential numbering and/or added digits be used? Will APEX document numbers be

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25X1 separate from regular APEX document numbers? Will the Senate Select Committee on Intelligence have access to the records of [] project designators and dissemination lists in the Central APEX Access Registry?

25X1 4. On 19 February 1980 you advised the Chairman, SSCI, of the President's approval of the APEX system and of the creation of a [] NID Annex (Tab A). Your letter makes a clear commitment to provide the [] NID Annex to the Chairmen and Ranking Minority Members of the House and Senate Intelligence Committees. However, the issues raised by question 17 go beyond access to [] information that will routinely be disseminated in the [] NID Annex. Essentially, the Committee is asking whether [] can be used to deny information to the oversight committees, and whether or not they will get access to all [] documents. There are two different approaches to answering this question:

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Approach (1)

In order to assure maximum congressional support for APEX, advise the Committee that it is your intention to make all [] available to the Chairmen and Ranking Minority Members of the House and Senate Intelligence Committees, subject only to determination by the President that particular documents or categories of information should be withheld.

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Approach (2)

Advise the Committee that the [] designation cannot in and of itself be used to withhold information from the intelligence committees, and that the Committee's access to [] will be in accordance with the recently enacted congressional oversight provisions and the procedures established by the President and the select committees pursuant thereto.

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Proposed answers to question 17 along the lines of these differing approaches are attached as Approach (1) and Approach (2).

5. The differences between the two approaches are significant. The first amounts to a blanket advance commitment to provide all [] documents to four Members of the Congress subject only to a Presidential decision that particular documents or categories of information must be

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withheld. Such a commitment gives up a large part of what we gained in the negotiations on the statutory oversight provisions recently enacted by the Congress. During those negotiations we successfully argued against any blanket requirement to report sensitive sources and methods information to the oversight committees. It was out of recognition that such a requirement could elevate every committee request for sources and methods information to the level of Presidential privilege that the preambular clauses were inserted in the oversight provision. Essentially, the preambular clauses make our reporting obligation conditional on due regard for the protection of classified information and sources and methods from unauthorized disclosure. The legislative history to this language makes it clear that the scope of our obligation to report on sensitive collection activities would be subject to further negotiation between the Executive Branch and the Congress, but that it was intended to preserve the status quo after our experience with S. Res. 400. Thus, the first approach to answering question 17 would preclude further negotiations on all sources and methods covered by [] and would require a Presidential decision for withholding in each case. This approach, however, recognizes the very clear signals that Congress is concerned that [] will be abused by the Intelligence Community and/or the White House for domestic political convenience. In my view, even congressional neutrality towards APEX will require at least this much of a commitment.

6. On the other hand, the second approach to answering question 17 makes the scope of reporting of [] information subject to the agreements and procedures established pursuant to the statutory oversight provision. Clearly, such agreements and procedures should permit initial withholding decisions at a level below the President for the kind of sources and methods involved in []. Since some [] reporting will concern sensitive human source reporting which was of particular concern to the Agency during consideration of the statutory oversight language, there is good reason to avoid a blanket commitment to make such information available to the committees, subject only to Presidential involvement in each withholding. Our obligation to provide [] to the intelligence committees, other than the NID Annex, should be subject to the agreements developed through negotiations called for by the oversight provision.

7. Dan Silver, Fred Hitz, and I would like the opportunity to discuss this further with you before you make a decision on which approach you prefer.

8. All of the above paragraphs are classified CONFIDENTIAL.



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Attachments:

- Tab A - Letter to Congress
- Tab B - Approach (1) & Approach (2) to Question 17
- Tab C - SSCI Questions & Answers on the APEX Control System

SA/DCI [redacted] /tb (19 Nov 1980)

Distribution:

Original - Addressee

- 1 - DDCI
- 1 - OLC (Fred Hitz)
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